

CHAPTER 12 CONTRACT MANAGEMENT AND ADMINISTRATION

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1200 CONTRACT EXECUTION BY THE DISTRICT

- 1200.1 Only a contracting officer is authorized to sign and enter into a contract on behalf of the District.
- 1200.2 The contracting officer's name and official title shall be typed, stamped, or printed on the contract.
- 1200.3 The contracting officer shall sign the contract after it has been signed by the contractor.
- 1200.4 The contracting officer shall ensure that the person signing for the contractor has authority to bind the contractor.
- 1200.5 If the contract is with a partnership, the contracting officer, before signing for the District, shall obtain a list of all general partners and ensure that each person signing for the partnership has authority to bind the partnership.

1200.6 When a corporation is participating in a joint venture, the contracting officer shall obtain from the corporation secretary a certificate stating that the corporation is authorized to participate in the joint venture.

1200.7 When an agent is to sign a contract, the agent's authorization to bind the principal shall first be established by evidence satisfactory to the contracting officer.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1402 (February 26, 1988).

1201 CONTRACT EXECUTION BY CONTRACTORS

1201.1 A contract with an individual shall be signed by that individual.

1201.2 A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words "an individual doing business as [insert name of firm]."

1201.3 A contract with a partnership shall be signed in the partnership name by a general partner with authority to bind the partnership.

1201.4 A contract with a corporation shall be signed in the corporate name, followed by the word "by" and the signature and title of the person authorized to sign for the corporation.

1201.5 A contract with joint venturers may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner set forth in this section.

SOURCE: Final Rulemaking published at 35 DCR 1402 (February 26, 1988).

1202 CONTRACT DISTRIBUTION

1202.1 The contracting officer shall distribute copies of contracts or modifications within ten (10) working days after execution by all parties.

1202.2 The contracting officer shall distribute simultaneously signed copies or reproductions of the signed contract to the contractor and to the requesting agency.

SOURCE: Final Rulemaking published at 35 DCR 1403 (February 26, 1988).

1203 CONTRACT FILES

1203.1 The head of each office performing contracting or contract administration functions shall establish files containing the records of all contractual actions pertinent to that office's responsibility.

1202.2 The documentation in each contract file maintained by the contract office shall be sufficient to constitute a complete history of the transaction for the following purposes:

- (a) Providing a complete background as a basis for informed decisions at each step of the procurement process;
 - (b) Supporting actions taken;
 - (c) Providing information for reviews and investigations; and
 - (d) Furnishing essential facts in the event of litigation.
- 1203.3 The following contract files shall be established:
 - (a) A file for canceled solicitations; and
 - (b) A file for each contract.
- 1203.4 The contracting office file shall document the basis for the procurement and the award, the assignment of contract administration (including payment responsibilities), and any subsequent action taken by the contracting office.
- 1203.5 The contract file shall document actions prerequisite to, substantiating, and reflecting contract payments.
- 1203.6 Each file normally shall be kept separate. However, if appropriate, any or all of the files may be combined, especially if all functions or any combination of the functions are performed by the same office.
- 1203.7 Files shall be maintained at organizational levels that ensure the following:
 - (a) Effective documentation of contract actions;
 - (b) Ready accessibility to principal users;
 - (c) Minimal establishment of duplicate and working files; and
 - (d) Conformance with any regulations or procedures for file location and maintenance.
- 1203.8 A central control and, if needed, a locator system shall be established to ensure the ability to locate promptly any contract files.

SOURCE: Final Rulemaking published at 35 DCR 1403 (February 26, 1988).
- 1204 CLOSEOUT OF CONTRACT FILES**
- 1204.1 The provisions of this section shall govern time standards for closing out contract files.
- 1204.2 Small purchase files shall be considered closed when the contracting officer receives evidence of receipt of property and final payment.
- 1204.3 Files for all firm-fixed-price contracts, other than small purchases, shall be closed within six (6) months after the end of the month in which the contracting officer receives evidence of physical completion.

- 1204.4 Files for contracts requiring settlement of indirect cost rates shall be closed within thirty-six (36) months after the end of the month in which the contracting officer receives evidence of physical completion.
- 1204.5 Files for all other contracts shall be closed within twelve (12) months after the end of the month in which the contracting officer receives evidence of physical completion.
- 1204.6 The contracting officer shall ensure that all required contractual actions have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.
- 1204.7 A contract file shall not be closed in any of the following situations:
- (a) If the contract is the subject of a claim or dispute;
 - (b) If the contract is in litigation or under appeal; or
 - (c) In the case of a termination, if all termination actions have not been completed.

SOURCE: Final Rulemaking published at 35 DCR 1404 (February 26, 1988).

1205 PHYSICALLY COMPLETED CONTRACTS

- 1205.1 A contract shall be considered physically completed when any of the following has occurred:
- (a) The contractor has completed the required deliveries, and the District has inspected and accepted the supplies;
 - (b) The contractor has performed all services, and the District has accepted these services;
 - (c) All option provisions, if any, have expired; or
 - (d) The District has given the contractor a notice of complete contract termination.
- 1205.2 Facilities contracts and rental, use, and storage agreements shall be considered physically completed when either of the following has occurred:
- (a) The District has given the contractor a notice of complete contract termination;
or
 - (b) The contract period has expired.

SOURCE: Final Rulemaking published at 35 DCR 1405 (February 26, 1988).

1206 DETERMINATIONS AND FINDINGS

- 1206.1 Except as provided in §1207, a determination and findings (D&F) shall be used for an individual contract action and shall be retained in the contract file.
- 1206.2 The approval granted by a D&F shall be restricted to the proposed contract actions described in the D&F.

- 1206.3 A D&F may provide for a reasonable degree of flexibility, and reasonable variations in estimated quantities or prices may be permitted.
- 1206.4 If an option is anticipated, the D&F shall state the approximate quantity or period of performance to be awarded initially, the extent of the increase in quantity or period of performance to be permitted by the option, and the date by which the option must be exercised.
- 1206.5 Each D&F shall set forth enough facts and circumstances to justify clearly and convincingly the specific determination made.
- 1206.6 Each D&F shall include at least the following information in a format prescribed by the Director:
- (a) Identification of the agency and of the contracting activity and specific identification of the document as a "Determination and Findings";
 - (b) The nature or description of the action being approved;
 - (c) Citation of the appropriate statute or regulation upon which the D&F is based;
 - (d) Findings that detail the particular circumstances, facts, or reasoning essential to support the determination, including supporting documentation obtained from appropriate requirements and technical personnel;
 - (e) A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation;
 - (f) The expiration date of the D&F, if required; and
 - (g) The signature of the official authorized in accordance with this title to sign the D&F, and the date signed.
- 1206.7 If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F prior to the date of supersession.
- 1206.8 For those D&F's required by law to be certified by the Director, the Director shall certify the determination and the head of the using agency shall certify the findings.

SOURCE: Final Rulemaking published at 35 DCR 1405 (February 26, 1988).

1207 CLASS DETERMINATIONS AND FINDINGS

- 1207.1 A class D&F shall provide authority for a class of contracting actions.
- 1207.2 A class D&F may consist of contracting actions for the same or related supplies or services or other contracting actions that require essentially identical justification.
- 1207.3 The findings in a class D&F shall fully support the proposed action either for the class as a whole or for each action.

1207.4 A class D&F shall be for a specified period, with the expiration date stated in the document.

1207.5 The contracting officer shall ensure that individual actions taken pursuant to the authority of a class D&F are within the scope of the D&F.

SOURCE: Final Rulemaking published at 35 DCR 1406 (February 26, 1988).

1208 EXPIRATION OF DETERMINATIONS AND FINDINGS

1208.1 Expiration dates are required for class D&F's and are optional for individual D&F's.

1208.2 Authority to act under an individual D&F shall expire when the authority is exercised or on an expiration date specified in the document, whichever occurs first.

1208.3 Authority to act under a class D&F shall expire on the expiration date specified in the document.

1208.4 When a solicitation has been furnished to prospective offerors before the expiration date, the authority under the D&F shall continue until award of the contract(s) resulting from the solicitation.

SOURCE: Final Rulemaking published at 35 DCR 1407 (February 26, 1988).

§1209: RESERVED

1210 PROCUREMENT PLANNING

1210.1 Agencies shall perform procurement planning and conduct market surveys to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired.

1210.2 When full and open competition is not required by law, agencies shall perform procurement planning and conduct market surveys to obtain competition to the maximum extent practicable.

1210.3 Procurement planning shall integrate the effort of all personnel responsible for significant aspects of the procurement.

1212.4 The Director shall prescribe procedures for the following:

- (a) Ensuring that contracts are awarded after full and open competition with adequate procurement planning and availability of funds;
- (b) Ensuring that procurement planning addresses the requirement to specify needs, develop specifications, and to solicit offers in a manner that will promote and

provide for full and open competition with due regard to the nature of the supplies and services to be acquired;

- (c) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the procurement becomes more complex and costly, specifying those cases in which a written plan must be prepared;
- (d) Writing plans either on a system basis or on an individual contract basis, depending upon the procurement;
- (e) Ensuring that the principles of this section are used, as appropriate, for all procurements whether or not a written plan is required;
- (f) Reviewing and approving procurement plans and revisions to these plans;
- (g) Establishing criteria and thresholds at which design-to-cost and life-cycle cost techniques will be used;
- (h) Establishing standard procurement plan formats, if desired, suitable to agency needs; and
- (i) Waiving requirements of detail and formality as necessary in planning for procurements having compressed delivery or performance schedules because of the urgency of the need.

1210.5 Procurement planning shall begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which the contract award is necessary. In developing the plan, the planner may form a team consisting of all those who will be responsible for significant aspects of the procurement, such as contracting, fiscal, legal, and technical personnel and, when applicable, the Minority Business Opportunity Commission.

1210.6 In order to facilitate attainment of the procurement objectives, each plan shall identify milestones at which decisions should be made. The plan shall address all the technical, business, management, and other significant considerations that will control the acquisition.

SOURCE: Final Rulemaking published at 35 DCR 1407 (February 26, 1988).

1211 POSTAWARD ORIENTATION

1211.1 If the contracting officer determines that a postaward orientation of contractors and subcontractors is necessary, it shall be conducted through a conference, a letter, or some other written form of communication. Contracting officers shall decide whether a postaward orientation in any form is necessary.

1211.2 If a postaward orientation is conducted, it shall be conducted to assist both the District and contractor personnel to achieve a clear and mutual understanding of all contract requirements and identify and resolve potential problems. However, it shall not be a substitute for the contractor's full understanding of the work requirements

at the time offers are submitted, nor shall it be used to alter the final agreement arrived at in any negotiations leading to contract award.

1211.3 The use of postaward orientation shall be encouraged to assist sheltered market contractors.

1211.4 When deciding whether postaward orientation is necessary and, if so, what form it shall take, the contracting officer shall consider, among other factors, the following:

- (a) The nature and extent of the preaward survey and any other prior discussions with the contractor;
- (b) The type, value, and complexity of the contract;
- (c) The complexity and acquisition history of the product or service;
- (d) Requirements for spare parts and related equipment;
- (e) The urgency of the delivery schedule and relationship of the product or service to critical programs.
- (f) The length of the planned production cycle;
- (g) The extent and nature of subcontracting;
- (h) The contractor's performance history and experience with the product or service;
- (i) The contractor's status, if any, as a minority business, District-based business, or women-owned business;
- (j) The contractor's performance history with minority business, District-based business, or women-owned business;
- (k) Safety precautions required for hazardous materials or operations; and
- (l) Complex financing arrangements, such as progress payments, advance payments, or guaranteed loans.

1211.5 If a letter or other written form of communication is used instead of a conference, the letter shall identify the District representative responsible for administering the contract and cite any unusual or significant contract requirements.

SOURCE: Final Rulemaking published at 35 DCR 1409 (February 26, 1988).

1212 POSTAWARD CONFERENCE

1212.1 If the contracting officer decides that a postaward conference is needed, he or she shall be responsible for the following:

- (a) Establishing the time and place of the conference;

- (b) Preparing the agenda, when necessary;
- (c) Notifying appropriate District representatives;
- (d) Notifying appropriate contractor representatives;
- (e) Designating or acting as chairperson;
- (f) Conducting a preliminary meeting of District personnel; and
- (g) Preparing a summary report of the conference.

- 1212.2 The chairperson of the conference shall conduct the meeting.
- 1212.3 Unless a contract change is contemplated, the chairperson shall emphasize that it is not the purpose of the meeting to change the contract.
- 1212.4 The contracting officer may make commitments or give directions, within the scope of the contracting officer's authority, and shall put in writing and sign any commitment or direction, whether or not it changes the contract.
- 1212.5 Any change to the contract that results from the postaward conference shall be made only by a formal contract modification referencing the applicable terms of the contract.
- 1212.6 Participants without authority to bind the District shall not take action which alters the contract in any way.
- 1212.7 The chairperson shall prepare and sign a summary report of the postaward conference.
- 1212.8 The chairperson shall include in the summary report all information and guidance provided to the contractor.
- 1212.9 The report shall cover all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions.
- 1212.10 The chairperson shall furnish copies of the report to the contracting office, the contractor, and others who require the information.

SOURCE: Final Rulemaking published at 35 DCR 1410 (February 26, 1988).

1213 POSTAWARD CONFERENCE WITH SUBCONTRACTORS

- 1213.1 The prime contractor shall be responsible for conducting postaward conferences with subcontractors. The contracting officer shall determine whether a conference is necessary for any or all subcontractors and shall notify the prime contractor.
- 1213.2 The prime contractor shall ensure that representatives from involved contract administration offices are invited.

1213.3 At postaward conferences with subcontractors, District representatives shall recognize the lack of privity of contract between the District and subcontractors, and shall not take action that is inconsistent with or alters the subcontracts.

1213.4 District representatives shall ensure that any changes in direction or commitment affecting the prime contract or contractor resulting from a subcontractor conference are made by written direction of the contracting officer to the prime contractor.

SOURCE: Final Rulemaking published at 35 DCR 1411 (February 26, 1988).

§1214: RESERVED

1215 INDIRECT COST RATES

1215.1 The establishment of final indirect cost rates shall provide the following:

- (a) Uniformity of approach with a contractor when more than one (1) contract or agency is involved;
- (b) Economy of administration; and
- (c) Timely settlement under cost-reimbursement contracts.

1215.2 Billing rates shall be established as a method for interim reimbursement of indirect costs at estimated rates subject to adjustment during contract performance and at the time the final indirect cost rates are established.

1215.3 The Director shall be responsible for establishing indirect cost rates for each contractor. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited by statute.

1215.4 Billing rates and final indirect cost rates shall be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

SOURCE: Final Rulemaking published at 35 DCR 1412 (February 26, 1988).

1216 DISALLOWANCE OF COSTS

1216.1 The contracting officer shall insert a provision, approved by the Director, on disallowance of costs in solicitations and contracts when a cost-reimbursement contract, fixed-price incentive contract, or contract providing for price redetermination is contemplated.

1216.2 The disallowance of cost provision shall include a statement that only costs determined in writing to be reimbursable in accordance with cost principles by the contracting officer shall be reimbursable.

- 1216.3 At any time during the performance of the contract, the contracting officer may issue the contractor a written notice of intent to disallow specified costs incurred or planned for incurrence.
- 1216.4 The purpose of the notice shall be to notify the contractor as early as practicable during contract performance that the cost is considered unallowable under the contract terms and District cost principles and to provide for timely resolution of any resulting disagreement.
- 1216.5 Before issuing a written notice, the contracting officer shall make every reasonable effort to reach a satisfactory settlement through discussions with the contractor.
- 1216.6 If the contractor disagrees with the notice, the contractor may submit a written response to the contracting officer.
- 1216.7 The notice of disallowance of costs shall contain at least the following:
- (a) A reference to the contract provision required by §1216.2;
 - (b) The contractor's name and a list of the numbers of all affected contracts;
 - (c) A description of the costs to be disallowed, including estimated dollar value by item and applicable time period;
 - (d) The reasons for the intended disallowance;
 - (e) A description of the potential impact on billing rates and forward pricing rate agreements;
 - (f) The effective date of the notice and the date by which a written response must be received;
 - (g) A list of the recipients of copies of the notice; and
 - (h) A request that the contractor acknowledge receipt of notice.
- 1216.8 If a contractor submits a response that disagrees with the notice, the contracting officer who issued the notice shall either withdraw the notice or issue a written decision affirming the notice within sixty (60) days of the receipt of the response.

SOURCE: Final Rulemaking published at 35 DCR 1412 (February 26, 1988).

1217 DISALLOWANCE OF INCURRED COSTS

- 1217.1 Cost-reimbursement contracts, the cost-reimbursement portion of fixed-price contracts, letter contracts that provide for reimbursement of costs, and time-and-material and labor-hour contracts shall provide for disallowing costs during the course of performance after the costs have been incurred.
- 1217.2 A contracting officer may receive reimbursement vouchers directly from contractors, approve for payment those vouchers found acceptable, and suspend payment of questionable costs.

- 1217.3 If the examination of a voucher raises a question regarding the allowability of a cost under the contract terms, the contracting officer, after informal discussion as appropriate, may issue a notice of contract costs suspended or disapproved simultaneously to the contractor and the disbursing officer for deduction from current payments with respect to cost claimed but not considered reimbursable.
- 1217.4 If the contractor disagrees with the deduction from current payments, the contractor may appeal the contracting officer's decision to the Director in accordance with the disputes provision of the contract.

SOURCE: Final Rulemaking published at 35 DCR 1413 (February 26, 1988).

§§1218-1219: RESERVED

1220 NOVATION AND CHANGE-OF-NAME AGREEMENTS

- 1220.1 A request by a contractor to recognize a successor in interest or change in name shall be submitted in writing to the contracting officer.
- 1220.2 When a contractor asks the District to recognize a successor in interest, the contractor shall submit to the contracting officer three (3) signed copies of the proposed novation agreement and one (1) copy of each of the following:
- (a) A list of all affected contracts and purchase orders remaining unsettled between the transferor and the District showing for each the contract number and type, name and address of the contracting office, total dollar value as amended, and the remaining unpaid balance;
 - (b) The opinions of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of the transfer;
 - (c) Evidence of the transferee's capability to perform the contracts;
 - (d) The consent of sureties on all contracts listed if bonds are required, or a statement from the transferor that no bond is required; and
 - (e) Any other documents or evidence that the contracting officer deems appropriate.
- 1220.3 The contracting officer shall determine whether or not it is in the best interests of the District to recognize the proposed successor in interest. The contracting officer's decision shall include a determination whether the proposed successor is responsible under provisions of chapter 22 of this title.
- 1220.4 When it is in the best interests of the District not to concur in the transfer of a contract to another company, the original contractor shall remain under contractual

obligation to the District, and the contract may be terminated for reasons of default if the original contractor does not perform.

1220.5 The Corporation Counsel shall review each proposed novation and change-of-name agreement for legal sufficiency before execution.

1220.6 If recognizing a successor in interests to a District contract is consistent with the best interest of the District, the responsible contracting officer shall execute a novation agreement with the transferor and the transferee.

1220.7 The novation agreement shall contain the following requirements:

- (a) That the transferee assumes all of the transferor's obligations under the contract including those incurred in the past unless the contracting officer waives these obligations in writing after determining waiver to be in the best interests of the District;
- (b) That the transferor waives all rights under the contract against the District, except as otherwise provided in the novation agreement;
- (c) That the transferor guarantees performance of the contract by the transferee or provides a satisfactory performance bond; and
- (d) That nothing in the agreement shall relieve the transferor or transferee from compliance with any applicable law or regulation.

1220.8 Any of the requirements set forth in §1220.7 may be waived by the contracting officer if waiver is in the best interests of the District. Each proposed waiver shall be included in the Corporation Counsel pre-execution review required by §1220.5.

1229.9 The contracting officer shall forward signed copies of the executed novation or change-of-name agreement to the transferor and transferee and retain a signed copy in the case file.

SOURCE: Final Rulemaking published at 35 DCR 1414 (February 26, 1988).

1299 DEFINITIONS

1299.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Billing rate - an indirect cost rate established temporarily for interim reimbursement of incurred indirect cost and then adjusted as necessary pending establishment of final indirect cost rates.

Change-of-name agreement - a legal instrument executed by the contractor and the District that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

Design-to-cost - a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.

Determination and Findings (D&F) - a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. The "determination" is a conclusion or decision supported by the "findings." The "findings" are statements of fact or the rationale essential to support the determination and cover each applicable requirement of the statute or regulation.

Director - the Director of the Department of Administrative Services.

Final indirect cost rate - the indirect cost rate established and agreed upon by the District and the contractor which is not subject to change. It is usually established after the close of the contractor's fiscal year to which it applies, unless the parties decide upon a different period.

Indirect cost rate - the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period.

Life-cycle cost - the total cost to the District of procuring, operating, supporting, and (if applicable) disposing of the items being acquired.

Market survey - a testing of the marketplace to ascertain whether other qualified sources capable of satisfying the District's requirement exist. It may range from written or telephone contacts with knowledgeable experts regarding similar or duplicate requirements, and the results of any market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (such as technical or scientific journals or the Commerce Business Daily) or solicitations for information or planning purposes.

Novation agreement - a legal instrument executed by a contractor (transferor), the successor in interest (transferee), and the District by which, among other things, the District recognizes the transfer of the contract and related assets.

Planner - the designated person or office responsible for developing and maintaining a written plan, or for the planning function in those acquisitions not requiring a written plan.

Procurement planning - the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling agency needs in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

SOURCE: Final Rulemaking published at 35 DCR 1416 (February 26, 1988).